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BEFORE THE
Federal Communications Commission
 WASHINGTON, D. C. 20554

Federal Communications Commission
 Office of Secretary

In the Matter of)
)
 Amendment of Section 73.202(b),) MB Docket No. _____
 Table of Allotments,)
 FM Broadcast Stations) RM- _____
 (Cumberland, Kentucky;)
 Weber City, Glade Spring and)
 Marion, Virginia))

TO: Honorable Marlene H. Dortch
 Secretary of the Commission

ATTN: Chief, Media Bureau

PETITION FOR RULEMAKING

JBL Broadcasting, Inc., licensee of FM Broadcast Station WVEK-FM (formerly WSEH), Cumberland, Kentucky (JBL), hereby respectfully submits this Petition for Rulemaking to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, as follows:

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Cumberland, KY	274A	None
Glade Spring, VA	274A	263A
Marion, VA	230C, 263A, 278A	230C, 273A, 278A
Weber City, VA	None	274C3

In support whereof, the following is shown:

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Preliminary Statement

1. JBL seeks to relocate WVEK-FM from Cumberland, Kentucky to Weber City, Virginia, and to upgrade its present channel, 274A, to Class C3 status.

2. In order to do this, two other changes to the FM Table of Allotments are necessary: (1) the substitution of Channel 263A for vacant Channel 274A at Glade Spring, Virginia; and (2) the partial undoing of the order in MM Docket No. 99-244 requiring station WOLD-FM, Marion, Virginia to move from its present Channel 273A to Channel 263A and to relocate to a new transmitter site--in other words revising the FM Table of Allotments so that WOLD-FM will remain on its present Channel 273A at Marion, Virginia at its current licensed site.

3. JBL hereby states that, should the Commission grant the changes to the FM Table of Allotments proposed herein, it will promptly apply for a construction permit for Channel 274C3 at Weber City, Virginia. Should that application be granted, JBL would then construct and operate the resulting Class C3 station at Weber City.

Technical Feasibility

4. There is attached hereto as Exhibit A an engineering statement of consulting radio engineer Jules Cohen, P. E., whose qualifications are well known to the Commission, showing that the proposed changes to the FM

Table of Allotments are in full compliance with Section 73.207 of the Commission's Rules.

4. Weber City Channel 274C3. Channel 274C3 may be allocated to Weber City in full compliance with all applicable separation requirements set forth in Section 73.207 of the Commission's Rules; and the resulting station will provide city-grade (70 dBu) service to all of the incorporated town of Weber City in accordance with Section 73.315 of the Commission's Rules.

5. Glade Spring Channel 263A. At present, the Glade City Channel 274A allocation is vacant, and, as of this writing, no applications have been accepted for this channel. While this allocation has been proposed by the Commission to be auctioned in FM Auction #62, final auction rules have not been adopted as of this writing, and no party could possibly be prejudiced by a change in frequency from 102.7 MHz (Channel 274) to 100.5 MHz (Channel 263).

6. There is attached as Exhibit B an allocation study which shows that the allocation of Channel 263A at Glade Spring at the reference coordinates 36° 47' 50" North Latitude, 81° 36' 52" West Longitude is fully spaced to all relevant co- and adjacent-channel allocations¹.

¹Pursuant to Section 73.208(c)(8) of the Commission's Rules, which requires decimals to be rounded to the nearest kilometer, the allocation of Channel 263A at Glade Spring would be considered as a matter of law to be 72 kilometers from both WZJS(FM), Banner Elk, North Carolina, and

7. Restoration of Channel 273A at Marion, Virginia.

In the **Report and Order in MM Docket No. 99-244, Cumberland, Kentucky et al**, DA 02-620, 17 FCC Rcd 5024, where Channel 274A was first allocated to Glade Spring, the channel assignment for WOLD-FM, Marion, Virginia was changed from Channel 273A (102.5 MHz) to Channel 263A (100.5 MHz). As a part of said order, the party that wins the construction permit for Glade Spring will be responsible for paying for the relocation of WOLD-FM from 102.5 MHz to 100.5 MHz.

8. As of the date hereof, WOLD-FM has not been required to change channels, because no construction permit has ever been granted for Channel 274A at Glade Spring. JBL's instant proposal would eliminate the necessity for WOLD-FM to change channels, thereby serving the public interest by maintaining service to Marion, Virginia on 102.5 MHz and avoiding public confusion, and, furthermore, sparing the successful applicant for the Glade Spring allocation the not insubstantial cost of relocating WOLD-FM to another channel, which includes the cost of relocating WOLD-FM to another transmitter site². The public interest, convenience

and WMJD(FM), Grundy, Virginia, both operating on channel 264A, and therefore fully-spaced from both of them.

²The allocation of Channel 274A at Glade Spring contemplated the relocation of the WOLD-FM transmitter site from its current authorized location, 36° 54' 10" North Latitude, 81° 32' 27" West Longitude, to a new site at 36° 51' 23" North Latitude, 81° 30' 21" West Longitude. **Docket 99-244, supra**, 17 FCC Rcd 5024 at n. 7.

and necessity would be well served by restoring the allocation of Channel 273A at Marion, Virginia³.

Eligibility of Weber City for Channel 274C3

9. Weber City is an incorporated town located in Scott County in southwest Virginia. It is listed in the United States Census and had a 2000 Census population of 1,333. It has a town government, an elementary school, a fire department and a United States Post Office (zip code 24290). It has a cable television system. It has a number of commercial establishments, including 2 automobile dealers, a floor coverings dealer, five markets/convenience stores, two banks, a florist, two fuel/oil distributors, a funeral home, a furniture store, an insurance agency, a manufactured home dealer, a nursing home, a medical clinic, a pharmacy, a truck leasing agency and a warehouse.

³There are four applications for vacant Channel 273A at Shawsville, Virginia, all of which were filed in 1997, prior to the initiation of Docket 99-244. Two of them, BPED-19971021MF and BPH-19971023MC, are fully spaced to the existing WOLD-FM operation on Channel 273 at Marion, 126.06 km and 126.64 km distant respectively (114.50 km required). As to the other two Shawsville applications, BPH-19971022MC is short-spaced to the existing WOLD-FM facility on Channel 273A by 6.10 km (108.40 km actual vs. 114.50 km required), and BPH-19971023ME is short-spaced to the existing WOLD-FM facility by 0.11 km (114.39 km actual vs. 114.50 required). Since WOLD-FM continues to be a licensed station on Channel 273A and is entitled to full spacing from proposed facilities pursuant to 47 U.S.C. §316(a), the presence of the two applications at Shawsville would not be as a matter of law a bar to the restoration of Channel 273A at Marion, Virginia in the FM Table of Allotments, particularly because both of them requested Section 73.215(a) processing, and they would be left in precisely the same position as they occupied in October, 1997 when their applications were filed. Accord: **Beloit Broadcasters, Inc. v. FCC**, 365 F.2d 962 (D. C. Cir. 1966) (restoration of service on 1380 kHz at St. Louis, Missouri does not modify the license of WBEL, 1380 kHz, South Beloit, Illinois).

10. Indeed, in the **Report and Order in MM Docket No. 99-244**, supra, at ¶6, the Commission determined that Weber City is a community for allotment purposes. Further, although Weber City is roughly 5 miles from the center of Kingsport, Tennessee, the Commission found that, applying the principles set down in **Faye and Richard Tuck**, 3 FCC Rcd 5374 (1988), that the allocation of Channel 274C3 at Weber City would be a "first local service". *Id.* at ¶8.⁴

11. It is settled law at the Commission that, when the Commission makes a determination that a geographic location is a community for licensing purposes, subsequent parties before the Commission are entitled to rely on that determination. **Sunshine Broadcasting, Inc.**, 101 FCC 2d 476 (Rev. Bd. 1985), review denied, 1 FCC Rcd 174 (1986), *aff'd* by judgment sub nom. **L.B.C., Inc. v. FCC**, 865 F.2d 1329 (D. C. Cir. 1988) (determination that Fort Myers Villas, Florida

⁴Paragraph 8 of the **Report and Order in MM Docket No. 99-244** states:

We further believe that the reallocation to Weber City triggers priority (3) as a first local service. Although Weber City is located outside the Kingsport, Tennessee-Virginia Urbanized area, Station WSEH(FM)'s 70 dBu signal will encompass 100% of that Urbanized area, and, as a result, petitioner provided a Tuck showing that it should be credited with a first local service and that the local stations in the Kingsport, Tennessee-Virginia Urbanized Area should not be attributed to Weber City. We have reviewed that showing and agree that Weber City is sufficiently independent from the central city of the Urbanized Area to be credited with a first local service for purposes of comparison under the FM allotment priorities. We base this finding on the presence of the majority of the eight factors on interdependence outlined in the Tuck test. [footnote omitted] Of those eight factors, we find that petitioner has satisfied factors (3), (4) (5) (6) and (8). No information was given for factors (1), (2) or (7). While a first local preference is not dispositive on the criteria of signal population and size of the suburban community relative to the adjacent city, we note that the city boundaries between Weber City and Kingsport (population 44,905) are less than five miles.

was a community for licensing purposes in a rulemaking proceeding was binding on parties in a subsequent comparative hearing proceeding where there were different communities specified under the old "10 mile Rule").

12. Furthermore, the Weber City Channel 274C3 facility will serve more people, promoting a more efficient use of the FM spectrum. The Commission in 2002 made the following findings of fact in Docket 99-244: (a) "that the reallocation and upgrade of Station WSEH(FM) at Weber City would result in a loss of service to 57,146 persons and a gain of service to 324,873 persons, for a net gain of service to 265,263 persons"; and (b) "the gain and loss areas are otherwise well served with five or more full-time reception services". 17 FCC Rcd 5024, at ¶10.

Cumberland, Kentucky Will Retain Local Service

13. Cumberland, Kentucky will continue to be the community of license of WCPM(AM), 1280 kHz, FCC Facility No. 14729, which is authorized to operate with 1 kW daytime and 115 watts at night. Because Cumberland will continue to have at least one local broadcast station, the Commission can grant the relocation of Channel 274 to Weber City. See e.g. **FM Table of Allotments, Cadiz and Oak Grove, Kentucky**, 10 FCC Rcd 10785 (Bureau, 1995), *recons. den.*, 11 FCC Rcd 22208 (Bureau, 1996), *review dismissed*, 16 FCC Rcd 9556 (2001) (FM channel relocation approved where Cadiz, Kentucky

would still served by daytime-only AM station WKDZ after its FM channel was relocated to Oak Grove, Kentucky).

14. Furthermore, as is demonstrated in the Jules Cohen engineering statement (Exhibit A), the area presently served on Channel 274A by WVEK-FM will continue to receive multiple aural broadcast services, and the community of Cumberland will continue to receive city-grade service from WCPM(AM) and four FM stations.

15. Therefore, a fair, efficient and equitable distribution of broadcast service required by 47 U.S.C. §307(b) will continue to occur after Channel 274 is reallocated to Weber City, Virginia.

Conclusion

16. Weber City, Virginia has been previously determined by the Commission to be eligible for an FM allotment, and the Commission has also previously determined that Channel 274C3 could be allotted to Weber City under the rule of **Faye and Richard Tuck**, *supra*. The allocation of Channel 274C3 at Weber City works from a technical standpoint consistent with Sections 73.207 and 73.315 of the Commission's Rules, so long as Channel 263A is substituted for Channel 274A at Glade Spring, Virginia, and the present operating frequency for WOLD-FM, Channel 273A, is restored into the FM Table of Allotments, which was the *status quo ante* MM Docket No. 99-244. As has been demonstrated herein,

the public interest, convenience and necessity would be well served by (1) a first local broadcast service at Weber City, Virginia and (2) a more efficient use of the broadcast spectrum on Channel 274, while an existing allotment at Glade Spring, Virginia is preserved, and WOLD-FM at Marion, Virginia will be able to continue to operate on its existing channel at its existing site.

WHEREFORE, JBL Broadcasting, Inc. urges that its Petition for Rulemaking **BE GRANTED**, that Channel 274 **BE REALLOTTED** from Cumberland, Kentucky to Weber City, Virginia and upgraded to Class C3 status⁵, and that the changes to the FM Table of Allotments at Glade Spring, Virginia⁶ and Marion, Virginia⁷ proposed herein **BE ALLOWED**.

Respectfully submitted,

JBL BROADCASTING, INC.⁸

By


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Its Attorney

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May 26, 2005

⁵The reference coordinates for Channel 274C3 at Weber City, Virginia are: 36° 31' 36" North Latitude, 82° 35' 13" West Longitude.

⁶The reference coordinates for Channel 263A at Glade Spring, Virginia are: 36° 47' 50" North Latitude, 81° 36' 52" West Longitude.

⁷The reference coordinates for Channel 273A at Marion, Virginia are the same as the current WOLD-FM transmitter site: 36° 54' 10" North Latitude, 81° 32' 27" West Longitude.

⁸FRN # 0013-5314-62. It is hereby certified on behalf of JBL Broadcasting, Inc., that neither it nor any officer, director, shareholder or principal is subject to a denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. §853a.

EXHIBIT A

JULES COHEN, P.E.
Consulting Engineer

**ENGINEERING STATEMENT
ON BEHALF OF
JBL BROADCASTING, INC.**

This engineering statement, prepared on behalf of JBL Broadcasting, Inc. ("JBL"), is in support of a proposal to relocate FM broadcast station WSEH from Cumberland, Kentucky, to Weber City, Virginia. Changes in the FM Table of Allotments (FCC Rule No. 73.202(b)) proposed are as follows:

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Cumberland, KY	274A	None
Glade Spring, VA	274A	263A
Marion, VA	230C, 263A, 278A	230C, 273A, 278A
Weber City, VA	None	274C3

Geographic coordinates proposed for the three new allotments are:

<u>Community</u>	<u>Latitude</u> (°-'-")	<u>Longitude</u> (°-'-")
Glade Spring	36-47-50	81-36-52
Marion	36-54-10	81-32-27
Weber City	36-31-36	82-35-13

The site for Marion is the present location of WOLD-FM now operating on channel 273A. The location is nominally short spaced with two applications for use of channel 273A at Shawsville, Virginia (File Nos. BPH-19971022MC and BPH-19971023ME). But both applications were filed in accordance with Rule No. 73.215 to show that no prohibited contour overlap would be involved with WOLD-FM operating on channel 273A.

JULES COHEN, P.E.
Consulting Engineer

At the suggested location for the Glade Spring allotment, a nominal short spacing of 0.3 kilometer (from the specified 72.0 kilometers) occurs with WZJS, Banner Elk, North Carolina, and WMJD, Grundy, Virginia, both operating on channel 264A. Pursuant to FCC rule 73.208(c)(8), these spacings round to the full required spacing for adjacent channel Class A stations.

The Cumberland community would still have a local aural voice because AM broadcast station WCPM is licensed to Cumberland. In addition to that factor, a study has been made of other FM and AM stations providing service within the present WSEH 60 dBu contour. Figure 1 accompanying this statement is a listing of FM broadcast stations providing such service. A similar listing for AM broadcast stations is included as Figure 2.

An area of approximately eight square kilometers in the southern portion of the WSEH 60 dBu contour appears to have the least number of other aural services. In that area, four FM stations (WAXM, WEKH, WSJS and WJNV) and four AM stations (WTCW, WSWV, WFSR and WHLN) provide coverage. Cumberland is served not only by its own station WCPM but four FM stations (WTCW, WSWV, WFSR and WHLN) place signal strength in excess of 70 dBu over the community. Numerous FM stations also place signal strength in excess of 60 dBu over Cumberland, with a number of AM stations providing at least 0.5 mV/m signal strength over the community as well.

Jules Cohen, P.E.

May 25, 2005

JULES COHEN, P.E.
Consulting Engineer

Figure 1

**OTHER AUTHORIZED FM BROADCAST STATIONS PROVIDING SERVICE WITHIN
WSEH 60 DBU CONTOUR**

<u>Call</u>	<u>Location</u>	<u>Channel</u>	<u>ERP</u> (kW)	<u>HAAT</u> (meters)	<u>From WSEH</u>	
					<u>Distance</u> (km)	<u>Bearing</u> (deg.T)
WMMT	Whitesburg, KY	204C1	1(H) 15(V)	448	26.0	33.8
WISE-FM	Wise, VA	213A	0.22(H&V)	204	34.7	81.7
WEKH	Hazard, KY	215C1	31(H&V)	324	40.0	320.4
WWJD	Pippa Passes, KY	219C3	7.3(H&V)	166	45.9	2.8
WAXM*	Big Stone Gap, VA	228C2	2.45(H&V)	574	0.6	117.1
WIFX-FM	Jenkins, KY	232C2	6.3(H&V)	410	37.3	41.7
WZQQ	Hyden, KY	250C3	1.75(H&V)	368	39.8	320.8
WJNV	Jonesville, VA	256A	4.0(H&V)	123	33.9	225.2
WVSG	Coeburn, VA	259C3	1.95(H&V)	356	27.6	56.1
WSGS*	Hazard, KY	266C	100(H) 88(V)	446	39.6	321.2
WDXC	Pound, VA	272A	0.35(H&V)	401	34.7	40.8
WXKQ-FM	Whitesburg, KY	280A	0.145(H&V)	457	26.0	33.8
WEYE	Surgoinsville, TN	282A	4.1(H&V)	121	43.3	167.8
WJMD	Hazard, KY	284A	0.48(H&V)	346	39.8	320.8
WTUK	Harlan, KY	286A	0.53(H&V)	316	35.7	267.6
WSWV-FM	Pennington Gap, VA	288A	3.5(H&V)	84	23.9	212.0
WNVA-FM	Norton, VA	292A	1.65(H&V)	187	28.4	78.6
WKCB-FM	Hindman, KY	296A	1.55(H&V)	198	46.3	354.

* Serves entire WSEH 60 dBu area.

JULES COHEN, P.E.
Consulting Engineer

Figure 2

**AUTHORIZED AM BROADCAST STATIONS PROVIDING SERVICE WITHIN WSEH 60
DBU CONTOUR**

<u>Call</u>	<u>Location</u>	<u>Frequency</u> (kHz)	<u>ERP</u> (kW)	<u>From WSEH</u>	
				<u>Distance</u> (km)	<u>Bearing</u> (deg.T)
WTCW	Whitesburg, KY	920	4.2	28.1	24.9
WFSR	Harlan, KY	970	5.0	38.4	261.9
WKVG	Jenkins, KY	1000	1.0	37.3	41.7
WDUF	Duffield, VA	1120	1.0	25.1	157.2
New	Hazard, KY	1160	5.0	44.8	327.2
WLSD	Big Stone Gap, VA	1220	1.0	16.8	120.1
WMCH	Church Hill, TN	1260	1.0	46.0	162.8
WCPM	Cumberland, KY	1280	1.0	10.0	309.5
WKCB	Hindman, KY	1340	1.0	46.7	348.7
WNVA	Norton, VA	1350	5.0	28.4	78.6
WKIC	Hazard, KY	1390	5.0	45.2	322.6
WHLN	Harlan, KY	1410	5.0	44.7	260.6
WEZC	Neon, KY	1480	5.0	35.5	28.1
WQXY	Hazard, KY	1560	1.0	47.4	327.1
WSWV	Pennington Gap, VA	1470	2.3	23.9	212.0

EXHIBIT B

GLADE SPRING, VA 263A ALLOCATION STUDY

REFERENCE

36 47 50 N.

CLASS = A

DISPLAY DATES

DATA 05-25-05

81 36 52 W.

Current Spacings

SEARCH 05-25-05

----- Channel 263 - 100.5 MHz -----

Call	Channel	Location		Azi	Dist	FCC	Margin
AL263	RSV 263A	Marion	VA	55.7	11.70	115.0	-103.30
(Substitution of channel 273A proposed -- WOLD licensed channel)							
WRICFM	LIC-D 264A	Richlands	VA	327.4	46.73	72.0	-25.27
(WRIC-FM was ordered to 249A in MM Docket No. 99-244 that is now final. See DA 03-1124 at paragraph 24 and DA 03-2099 at paragraph 12. The Commission has held that rulemaking proposals may rely on actions taken in prior Report and Orders. Therefore, the WRIC licensed 264A facility does not have to be protected since it has been ordered to 249A in MM Docket No. 99-244. It is further noted that WRIC-FM has a construction permit on the new 249A channel.)							
WZJS	LIC-D 264A	Banner Elk	NC	196.0	71.69	72.0	-0.31
(Rounds to 72 km per Commission policy)							
WMJD.C	CP 264A	Grundy	VA	321.6	71.73	72.0	-0.27
(Rounds to 72 km per Commission policy)							
WKQY	LIC 261A	Tazewell	VA	2.6	37.37	31.0	6.37
WKEEFM	LIC 263B	Huntington	WV	337.2	192.67	178.0	14.67
WVBZ	LIC 262C	High Point	NC	119.4	185.01	165.0	20.01
RDEL	DEL 262C	High Point	NC	119.4	185.01	165.0	20.01
WSSLFM	LIC 263C	Gray Court	SC	190.4	250.95	226.0	24.95
WSSLFM	CP 263C	Gray Court	SC	190.4	251.00	226.0	25.00
WKOYFM	LIC-N 265A	Princeton	WV	36.7	63.04	31.0	32.04
WFNRFM	LIC 264A	Christiansburg	VA	73.9	121.07	72.0	49.07
WSGS	LIC 266C	Hazard	KY	288.1	146.24	95.0	51.24
RADD	ADD 262C0	Liberty	NC	114.5	213.55	152.0	61.55
WIFMFM	LIC-N 265A	Elkin	NC	133.6	96.36	31.0	65.36
WBGQ	LIC 264A	Bulls Gap	TN	252.1	147.53	72.0	75.53
WBGQ.C	CP -Z 264A	Bulls Gap	TN	252.1	147.53	72.0	75.53
WNOX	LIC 262C	Oak Ridge	TN	254.9	243.66	165.0	78.66
WKSF	LIC 260C	Old Fort	NC	214.3	183.70	95.0	88.70
AL260	RSV 260C	Old Fort	NC	214.3	183.70	95.0	88.70
WVRUFM	LIC 210A	Radford	VA	67.6	101.90	10.0	91.90
WVAF.C	CP -N 260B	Charleston	WV	2.7	164.05	69.0	95.05
WAFD	LIC 262B	Webster Springs	WV	29.2	212.52	113.0	99.52
WVAF	LIC 260B	Charleston	WV	2.2	168.97	69.0	99.97
WMDJFM	LIC 261A	Allen	KY	312.3	131.29	31.0	100.29
WZBB	LIC-N 260C3	Stanleytown	VA	84.5	148.82	42.0	106.82
AP209	APP 209A	Kingston	WV	11.9	130.51	10.0	120.51
WZTK	LIC-D 266C	Burlington	NC	115.4	216.79	95.0	121.79
WFFC	LIC 210A	Ferrum	VA	83.6	142.56	10.0	132.56
WFFC.C	CP -D 210A	Ferrum	VA	84.5	148.82	10.0	138.82

CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing "Petition for Rulemaking" was served by first-class United States mail, postage prepaid, on this 26th day of May, 2005 upon each of the following:

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